

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

UNITED STATES OF AMERICA) CR No. 3:09-501-JFA
)
)
v.) ORDER
)
HEATH MAURICE THOMAS)
)

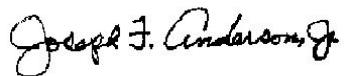
This matter is before the court upon a letter motion by the defendant to compel the government to reduce his sentence under Rule 35 of the Federal Rules of Criminal Procedure. The defendant contends that he has substantially assisted the government by testifying in another criminal case before another judge in this district.

The government has responded to the motion to compel and argues that it is not prepared to file such a motion at this time. The government submits that although the defendant testified in another criminal case, his cooperation is on-going and that the government does not plan to file Rule 35(b) motions until all prosecutions in anticipated spin-off criminal case are concluded.

The government ultimately retains discretion to determine whether to actually file a motion for reduction of sentence. Moreover, this court can only review the government's refusal to do so if such decision was based upon an unconstitutional motive or upon a factor not rationally related to a legitimate governmental end. *Wade v. United States*, 504 U.S. 181 (1992).

Because the defendant has failed to make a substantial threshold showing under *Wade*, and because the defendant's assistance has not been concluded at this time, the defendant's motion to compel is denied (ECF No. 1436).

IT IS SO ORDERED.



July 7, 2011
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge